IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.46 OF 2006
CONNECTED WITH
COMPANY APPLICATION NO.704 OF 2005

Kishco Cutlery Limited Petitioner

Mr.Amit Vyas with Sanjay Israni i/by Rajani Associates for petitioner.

Mr.C.J.Joy with R.C.Master and Mr.Prajapati, panel counsel i/by Dr.T.C.Kaushik for Regional Director.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th March 2006

PC :

1. The petition is under sections 391 to 394 read with Sections 78, 100 to 104 of the Companies Act, 1956. The scheme proposes to reduce the equity share capital of the petitioner and convert the preference share capital into a simple loan @ 4% p.a..

2. It is pointed out that the company is one of the leading manufacturers of Stainless Steel, Silver Plated Cutlery and Tableware in India. However, on account of accumulated losses as

mentioned in paragraph 8 and the arrangement proposed in paragraphs 9 to 12 protects the interest of those who would be affected by reduction inasmuch as a Demand Promissory Note will now be issued to the preference share holders. By an order passed in this matter, the petitioner convened a meeting of the equity share holders. The Chairman was appointed by this Court. His report is forwarded on affidavit dated 28th December 2005 and paragraphs 9 and 10 thereof read thus :-

> 9. Thereupon, both the aforesaid resolutions (i) on the proposed Scheme of Arrangement and Compromise, and (ii) reduction of paid up equity share capital was put to vote by poll.
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> 10. For the resolution on the proposed Scheme of Arrangement and Compromise, 40 Equity Shareholders, present and voting, representing 64.51% in number, holding 64.51% in value voted unanimously in favour of the Scheme of Arrangement and Compromise. None of the Equity Shareholders voted against the resolution, whereas 0% in terms of number and 0% in value were invalid votes. As for the Special Resolution for reduction of paid up equity share capital, 40 Equity Shareholders, present and voting, representing 64.51% in number and holding 64.51% in terms of value voted unanimously in favour of the Special Resolution while none of the Equity Shareholders voted against the resolution and 0% in terms of number and 0% in value were invalid votes. Hereto annexed and marled as EXHIBIT-A is the Scrutineer’s Report setting out the list of the

> Shareholders who voted in favour of the proposed Scheme of Arrangement and Compromise and the Special Resolution being adopted and carried into effect."

3. The Regional Director has also filed an affidavit and save & except pointing out that a special resolution passed on 14th December 2005 is not filed in the requisite format with the Registrar, no objection is raised to the scheme which contemplates reduction of share capital.

4. The learned counsel appearing for the petitioner states that now there is compliance with the requirement stipulated u/s 192(1) and the requisite compliance is made by forwarding particulars in Form no.23. There is an acknowledgement to that effect, which is placed on record.

5. In the light of the fact that the scheme contemplates reduction of capital, this Court ensured compliance with mandate of sub section 2 of section 101 and the meeting was not dispensed with. The report is also on record. The report indicates that 64.51% of the share holders have supported the scheme.

6. I am satisfied from a perusal of the petition and the averments referred to above as also the affidavit of the Regional Director, that although the company is incurring losses, the scheme as proposed is not prejudicial to the interest of share holders and creditors. A demand promissory note is made payable on demand. The resolution reducing the share capital is also now filed with the Regional Director and thus there is compliance with the orders of this Court as well as requirements stipulated in Companies Act. The petition is, therefore, allowed in terms of prayer clause (a). The minutes also stand approved in the light of the same. The Regional Director's costs quantified at Rs.2,500/-. All concerned to act on the copy of M.O.Scheme and copy of proposed minutes being Exhibit- annexed to the petition duly authenticated by Company Registrar. Filing and issuance of drawn up order is dispensed with.

(S.C.DHARMADHIKARI, J.)